

Message Text

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ACTION L-03

INFO OCT-01 IO-13 ISO-00 EB-08 TRSE-00 COME-00 AID-05

CIAE-00 FRB-03 INR-07 NSAE-00 USIA-06 XMB-02

OPIC-03 SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15

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L/SCHWEBEL; EB/BOEKER; OIA/KAUZLARICH; TREASURY/CLAPP;
COMMERCE/ARRILL

E.O. 11652: N/A

TAGS: EINV, UN, AID

SUBJECT: WORKING GROUP ON CODE OF CONDUCT OF COMMISSION ON
TRANSNATIONAL CORPORATIONS

REF: SMITH/SCHWEBEL TELCON, 4/28/77

1. SUMMARY: THE WORKING GROUP IS IN THE PROCESS OF TRYING
TO RECOVER FROM A BADLY IMBALANCED SET OF DRAFT ANNOTATIONS
PERPARED BY THE SECRETARIAT. WORKING GROUP CHAIRMAN (NIKlasson)
AFTER HEARING COMMENTS OF "FRIENDS OF CHAIRMAN" GROUP, WHICH
COMPLETED ITS WORK THURSDAY, IS UNDERTAKING TO PREPARE HIS
OWN DRAFT ANNOTATIONS. THE CHAIRMAN'S DRAFT WILL BE READY ON
MONDAY AND DISCUSSED ON TUESDAY AND WEDNESDAY BY RECONVENED
FULL WORKING GROUP. PROSPECTS FOR ACHIEVING AN AGREED SET OF
ANNOTATIONS AT THIS STAGE UNCERTAIN.

2. ABOUT TWENTY DELEGATIONS MET WITH CHAIRMAN OF INTER-
GOVERNMENTAL WORKING GROUP ON CODE OF CONDUCT FOR TRANSNATIONAL
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CORPORATIONS ON AFTERNOONS OF APRIL 27, 28, TO DISCUSS DRAFT
ANNOTATION OF OUTLINE OF CODE OF CONDUCT PRODUCED BY
SECRETARIAT FOLLOWING FIRST WEEK OF GROUP MEETINGS.
DRAWING ON COMMENTS OF THIS "FRIENDS OF THE CHAIRMAN"
GROUP, CHAIRMAN WILL TRY HIS HAND AT NEW DRAFT OF ANNO-
TATION, TO BE CIRCULATED MAY 2 AND DISCUSSED BY FULL
WORKING GROUP ON MAY 3 AND 4. PRIOR TO APRIL 27, 28

MEETING, US DEL EXPRESSED STRONG CONCERN TO SAHLGREN OF SECRETARIAT AND TO NIKLASSON, CHAIRMAN OF WORKING GROUP, OVER OBVIOUS BIAS TOWARD G-77 POSITIONS IN SECRETARIAT DRAFT, WHICH MATERIALLY REDUCES CHANCE OF ACHIEVING ACCEPTABLE COMPROMISE BY END OF SESSION.

3. INDUSTRIALIZED COUNTRIES GENERALLY ATTEMPTED IN MEETINGS WITH CHAIRMAN TO ACHIEVE NEUTRAL STATEMENTS OF ISSUES, COUPLED WITH CLEAR AND SPECIFIC CROSS-REFERENCES TO GOVERNMENT OBLIGATIONS, INCLUDING APPLICABILITY OF INTERNATIONAL LAW, WHERE APPROPRIATE. WHILE G-77 RESPONSIVE TO THIS APPROACH ON SEVERAL ISSUES, ON A NUMBER OF THE MOST IMPORTANT ELEMENTS OF CODE THEY INSISTED ON INCLUSION OF EXACT LANGUAGE THEY HAD AGREED AMONG THEMSELVES. THERE WAS GENERAL AGREEMENT ON A COVER NOTE WHICH MAKES CLEAR THAT THE ANNOTATIONS, WHILE POINTING TO AREAS WHICH WILL BE DISCUSSED IN FUTURE IGWG MEETINGS, IN NO WAY PREJUDICES POSITIONS ON THE ISSUES.

4. AMONG ISSUES ON WHICH G-77 INSISTED MOST STRONGLY ON FULL STATEMENT, IN NORMATIVE TERMS, OF THEIR WELL-KNOWN POSITIONS WERE A) PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES, WEALTH AND ECONOMIC ACTIVITIES; B) NON-INTERFERENCE IN INTERGOVERNMENTAL RELATIONS (E.G., NON-RECOURSE TO HOME GOVERNMENTS IN INVESTMENT DISPUTES); C) APPLICATION OF DOMESTIC LAW AND POLICIES TO DETERMINE COMPENSATION IN CASES OF NATIONALIZATION, WITH EXCLUSIVE JURISDICTION IN NATIONAL COURTS UNLESS HOST STATE AGREES OTHERWISE; AND D) "NON-PREFERENTIAL" TREATMENT OF TRANSNATIONAL CORPORATIONS LIMITED OFFICIAL USE

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BY GOVERNMENTS.

5. UNDER CODE HEADING "RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS", NIGERIAN DELEGATE, APPARENTLY WITH SUPPORT OF G-77, REQUESTED THAT FOLLOWING STATEMENT BE INCLUDED, VERBATIM, IN ANNOTATION:

6. "ABSTENTION BY TNC'S FROM INVESTMENT IN TERRITORIES UNDER FOREIGN OCCUPATION AND DOMINATION AND IN TERRITORIES UNDER THE CONTROL AND DOMINATION OF MINORITY, RACIST REGIMES, PARTICULARLY IN SOUTH AFRICA, AS WELL AS ABSTENTION FROM COLLABORATION IN ANY FORM WHATSOEVER WITH THE AUTHORITIES IN THOSE TERRITORIES."

7. INDUSTRIALIZED COUNTRIES INDICATED THAT SPECIFIC, NORMATIVE EXPRESSION OF CONTROVERSIAL G-77 VIEWS WOULD HAVE TO BE BALANCED BY EQUALLY SPECIFIC, NORMATIVE EXPRESSIONS OF THE COUNTRARY VIEWS, E.G., ON APPLICABILITY OF INTERNATIONAL LAW IN INVESTMENT DISPUTES AND RIGHT OF

HOME COUNTRIES TO INTERCEDE ON THEIR COMPANIES' BEHALF. US DEL, IN PARTICULAR, INSISTED IN THE MEETINGS AND PRI-
VIATELY TO CHAIRMAN THAT ACCEPTANCE OF G-77 LANGUAGE IN
FIRST THREE CHAPTERS OF CODE WOULD REQUIRE BALANCING LAN-
GUAGE IN SAME SECTIONS, AND NOT JUST CROSS REFERENCE TO
SECTION IV ON GOVERNMENT OBLIGATIONS, IF THAT SECTION
ITSELF IS INTERNALLY BALANCED BETWEEN OPPOSING IEWS,
AS G-77 APPEARS LIKELY TO INSIST. US DEL READ OUT, AND
SUPPLIED TO CHAIRMAN IN WRITING, BALANCING POINTS DIS-
CUSSED WITH DEPARTMENT IN APRIL 27 TELCON.

8. COMMENT: US DEL WILL FORWARD CHAIRMAN'S DRAFT TO
WASHINGTON AS SOON AS AVAILABLE. WE ARE SOMEWHAT SKEP-
TICAL HE WILL BE ABLE TO ACHIEVE ACCEPTABLE COMPROMISE
IN TIME REMAINING. IF NOT, HE MAY FORWARD ALREADY
AGREED OUTLINE OF CODE TO COMMISSION, ACCOMPANIED BY
REPORT ON HIS WON RESPONSIBILITY, WHICH WOULD BE DRAFTED
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SO AS NOT TO PREJUDICE THE POSITION OF ANY DELEGATION
ON CODE. COMMISSION'S DISCUSSION OF HUMAN RIGHTS QUES-
TION IN RELATION TO SOUTHERN AFRICA HAS BEEN POSTPONED
UNTIL MONDAY, MAY 2 AT REQUEST OF AFRICANS. WE UNDER-
STAND G-77 LIKELY TO PRESENT RESOLUTION CALLING FOR
WITHDRAWAL ON ALL FOREIGN INVESTMENT FROM NAMIBIA,
RHODESIA AND SOUTH AFRICA. US DEL COORDINATING WITH
USUN ON LOW-KEY RESPONSE BASED ON EXISTING GUIDANCE.
WE WOULD WELCOME ANY ADDITIONAL VIEWS DEPARTMENT MAY
CARE TO EXPRESS ON HOW THIS ISSUE SHOULD BE TREATED.
HEAVY AMBASSADORIAL LEVEL REPRESENTATION AT MEETING LIKELY.
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